BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-195-E

IN RE: Joint Petition for Approval of Accounting Order To Defer Incremental Covid-19 Expenses To Be Included In Future Rate Proceedings	))))))	**RESPONSE OF THE SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS**

The South Carolina Department of Consumer Affairs ("Department") submits this response to the Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, the "Companies"") for Approval of Accounting Order To Defer Incremental COVID-19 Expenses To Be Included In Future Rate Proceedings ("Petition"). The Department generally opposes the request for an accounting order at this time, particularly the request for a return on the deferral equal to the weighted average cost of capital. Regulatory accounting is an extraordinary relief and caution must be taken before granting it; therefore, the Commission should solicit additional information from the Companies and other interested parties, including the Office of Regulatory Staff ("ORS"), before making any decision.

I. Background

The first signs of COVID-19 began in late January – early February. By March the entire country was beginning to come to grips with the magnitude of this pandemic. Fortunately for our citizens, the Governor and the Commission acted prudently by ensuring all residents would have access to utility services as many soon found themselves out of work. South Carolina saw its unemployment rate rise from 2.4% in January, to a high of 12.8% in April.[1] The numbers are trending in a positive direction with the unemployment rate for July being 8.7% and the preliminary rate for August showing a further decrease to 6.3%. Although these numbers are promising, it does not mean the end is near and medical professionals have warned of the potential of a second wave in the winter.[2]

To the Companies' credit, they suspended disconnections due to non-payment and even reconnected some customers before the Commission issued Directive Order No. 2020-228.[3] The Companies were also gracious in voluntarily waiving all late-payment fees, return check charges, reconnection fees, and residential customers' electronic payment fees not already included in rates after the Commission waived the requirement for those fees in the same Directive.[4]

The Department appreciates the efforts the Companies have undertaken to minimize impacts on its consumers. The Department also appreciates that the Commission must ensure fair rates for consumers and adequate service from utilities. Utility rates can greatly benefit or harm the financial health of its ratepayers. The correlation between a utilities' services and the financial impacts on its ratepayers cannot be understated. During this unprecedented time, it is paramount that the Commission ensures the public that shareholders, and not just ratepayers, will share in this burden and that the Companies seek ways to cut costs while still providing safe and reliable service.

[1] U.S. Bureau of Labor Statistics. https://www.bls.gov/eag/eag.sc.htm
[2] https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/first-and-second-waves-of-coronavirus
[3] Petition, p. 5 – Companies suspended disconnections on March 13, Commission issued Directive to suspend disconnections and waiving regulations related to Late Payment Charges and Procedures for Termination of Service on March 18.
[4] Petition, p. 6

II. Companies Should Share the Burden of the Pandemic

While the Companies are not seeking recovery of lost revenue due to a decrease in usage, we believe it is improper to use lost revenue to justify the need for relief in other areas. It is not the purpose of the Commission to completely shield the Companies from adverse market conditions.

It is well settled that a utility is entitled to the *opportunity* to earn a fair rate of return. *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 598, 64 S. Ct. 281, 286 (1944) and *Bluefield Water Works Improvement Co. v. Public Service Comm'n*, 262 U.S. 679 (1922). However, a utility's ability to earn a fair rate of return is just that, an opportunity. *Hope* also states returns should be similar to the return on investments of other businesses with similar risks.[5] Utility companies are not immune from market forces. Many industries are currently suffering due to the current pandemic, dealing with a decrease in sales, and having to adjust.

A utility has the duty to prudently manage their business. Their authorized rate of return already reflects the inherent risk of doing business. Although the Department recognizes the Companies provide an essential service, they should not use the Commission to shield them from the negative impacts that other businesses and, most important, citizens of this state are experiencing. Market conditions change, and the Commission should not attempt to make the Companies whole due to an unforeseeable change in market conditions.

The Companies should shoulder some losses and not use their unique status as a regulated entity to pass the burden onto this state's citizens. The current focus of all parties should be on how to efficiently cut costs immediately. Suggestions for doing so include:

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[5] *Hope*, at 345 – also reiterating that regulations do not ensure that a business will produce net revenues.

1. The Companies could utilize short-term borrowing, if available. Such borrowing will allow for the Companies to continue providing safe and reliable services without sacrificing just and reasonable rates.
2. The Companies should implement more meaningful, cost saving actions. The only reductions in expenses mentioned in the petition are organic ones, naturally occurring because of operation limitations caused by the pandemic.[6] The Companies must take further cost saving measures or expound on the measures already taken. The petition is void of information pertaining to the staying of any dividend payouts, bonuses to upper management, or any other payments given to employees outside of their salary.
3. The Companies should consider the potential for certain capital expenditures being reduced or deferred to a later date due to current conditions, including decreased demand. These savings could be significant and offer further relief for ratepayers.

There will be ample time to discuss any potential cost recovery, but now is the only opportunity to cut costs and create savings that will mitigate losses and any potential long-term increase.

III. An Accounting Order Is Premature

Due to the ongoing and unique nature of the COVID-19 pandemic, an accounting order granting deferral of expenses is premature. There are many questions to be answered to ensure that the records kept by the Companies, as well as other utilities which may seek similar treatment, are adequate to assess in a future rate case. Additionally, the Companies may track financial impacts without an accounting order from the Commission and in fact, have already been directed

[6] Petition, p. 12. "The Companies have been able to reduce certain operating expenses, such as reduced employee expenses due to travel restrictions and reduced postage and print savings due to not sending disconnect letters."

to do so by Directive Order 2020-228. Approval of the petition would give the impression the Companies are guaranteed, or at least very likely, to be granted recovery of all costs tracked in the regulatory account.

It is still too early to understand the totality of the impacts the pandemic will have on utilities' rate of return, potential savings that could be generated, and state/federal assistance available to offset any increased costs. Furthermore, while the Companies have provided certain figures related to incremental costs and savings, they have not provided any details regarding how these figures were determined. For example, the Companies site bad debt expense as an item they seek to recover; however, there is no indication of how long the debt has been outstanding. It is quite possible this debt could still be collected. The Companies have also provided no evidence they will be unable to provide safe and reliable services without the requested accounting order.

In at least one docket, the Commission has sought input from the public regarding deferral accounts. *See* Docket 2019-233-A. A review of the comments submitted from utilities, ratepayers, and ORS in that docket demonstrates the breadth of questions and ideas raised, some of which are incorporated below. As such, the Department encourages the Commission to seek similar input here.

IV. Considerations for Future Recovery

In the event the Commission does not seek additional input from other interested stakeholders, the Department offers the following suggestions, which are not exhaustive, to promote a full review of the Companies' request.

a. Company Considerations

The Companies should be required, at a minimum, to:

1. File a detailed report that describes the process and methods for identifying and tracking all increases and decreases related to COVID-19;

2. Track and report any assistance received from federal or state governments, including assistance given to the utility through programs that are not necessarily intended for COVID-19 expenses, but nevertheless covers some of those expenses;
3. File detailed (monthly/quarterly) reports of tracked costs and lost revenue;
4. File copies of published credit rating agencies and equity analyst reports on any affiliate of the utility that directly or indirectly provides capital to the utility;
5. Recognize that all tracked costs must still be examined for prudence and reasonableness;
6. Attempt to recover no more than 80% of costs incurred to share the burden with ratepayers;
7. Not attempt to recover costs that cannot be ascertained or are extremely difficult to ascertain.
8. Defer all issues related to carrying costs until the next rate case;
9. Quantify savings such as employee training, travel, fuel, and any other related decreases in costs and use them to offset any additional expenses; and
10. Explain in detail how these incremental costs will prohibit safe and reliable service.

The Companies should follow these guidelines and ensure proper documentation if they wish to potentially recover any of these expenses in their next rate case. All costs should be discussed and analyzed during an evidentiary hearing. These steps will assist the Commission in ensuring only COVID-19 related costs are potentially recovered and there is no double recovery.

b. Commission Considerations

Respectfully, the Department believes the Commission should consider the following in its decision-making process:

1. Allow deferral only for costs that can be directly attributable to the COVID-19 pandemic;
2. Allow recovery of only the actual costs incurred by the Companies to disconnect and restore power, not merely the lost charges;
3. Establish a baseline for the various lost costs (e.g., compare 2019 figures to 2020 figures);
4. Assess other cost recovery options (e.g., federal aid, stimulus, securitization);
5. Allocate recovery to the applicable customer classes so that each pays its fair share if/when recovery is authorized. (The Companies' submittal shows residential bills have increased significantly over 2019 figures.[7]);
6. Require detailed record keeping and reporting by the Companies;
7. Review data from other states related to COVID-19 costs and savings;
8. Review orders from other states to determine any additional parameters that may be necessary to ensure adequate record keeping and to prevent unnecessary recovery;
9. Reiterate that any deferral does not guarantee recovery;
10. Require the Companies to develop and follow a plan that addresses ways to reduce costs, including capital expenditures and operation expenses, until their next rate case.

[7] Petition, p. 15.

V. Specific Denials

In the event the Commission decides to grant the accounting order request, the following items should be rejected.

a. Late Fees and Other Items That Are Not Actual Costs

In the Petition and quarterly reports, the Companies have provided figures indicating the amount of late fees foregone during the pandemic. These fees should not be, on their face, cost recoverable. Fees for late payments are merely a penalty meant to deter customers from making untimely payments and to cover an economic cost as opposed to an actual cost.

The Companies touting the fact that they prospectively waived fees to assist their customers, only to request recovery of those same fees later is a hollow gesture, at best. It is misleading for the Companies to classify those fees as being waived if they are actively seeking reimbursement thereof from customers at a later date. Recovery would go against the plain meaning of the word "waive" and would negate the Companies seeming generosity by seeking to recoup the waived fees plus additional carrying costs.[8] Further, any other cost (e.g., returned check fees) should only be considered to the extent the Companies actually incur a corresponding cost associated with them.

b. Carrying Costs

Carrying costs should also be denied. The Companies' request to defer waived fees does not adequately assist customers if they are seeking to recoup those fees later. Adding insult to injury, the Companies requested carrying costs be factored into their deferred amounts to compensate shareholders for the time value of advanced monies, further seeking to regain

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[8] https://news.duke-energy.com/releases/duke-energy-and-piedmont-natural-gas-take-new-steps-to-help-customers-communities-and-employees-in-wake-of-covid-19 -- Duke Energy's Press Release stating to customers that they are waiving certain fees.

additional money for fees that they purportedly waived. Adding carrying costs will greatly increase the amount consumers will ultimately pay. The Commission should reject the Companies request for carrying costs.[9] However, if the Commission believes that carrying costs may be warranted, the Companies should be allowed no more than their short-term debt rate.

VI. Conclusion

The current pandemic has all markets in disarray and every industry is struggling to adjust to the current market conditions. The Companies' unique status as a regulated utility should not be used to completely mitigate the effects of COVID-19 while other industries and citizens do not have this luxury. The current focus should not be on when, how, or if a utility will be able to recover expenses, but how it can reduce its costs to mitigate potential impacts. We should not be seeking ways to shift the financial burden on to citizens who are struggling to make ends meet.

The Department acknowledges the COVID-19 pandemic is an extraordinary event that has likely created issues for utilities similar to those for which the Commission has authorized deferral accounting in the past. However, this pandemic has also created unique circumstances that cannot be evaluated using the same criteria historically used by the Commission; therefore, the Commission should seek additional input from the public as well as further information from the Companies before authorizing the deferral so that expectations can be set regarding how the Companies will track costs and savings.

[9] Denial of carrying costs – **Ohio**: CASE NO. 20-1104-GA-AAM, CASE NO. 20-1011-GE-AAM (denying Duke's request for carrying charge); **Kansas**: Docket No. 20-EKME-454-ACT (deferring carrying charge issues to next rate case)

Respectfully submitted,

S.C. DEPARTMENT OF CONSUMER AFFAIRS

Carri Grube Lybarker, Esq. (Consumer Advocate)
Roger Hall, Esq. (Assistant Consumer Advocate)
P.O. Box 5757
Columbia, South Carolina 29250-5757
(803) 734-4200